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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,991	06/20/2001	Bruce H. Levin	10527/11	5652

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EXAMINER	
PEFFLEY, MICHAEL F	

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/883,991	LEVIN, BRUCE H.	
	Examiner	Art Unit	
	Michael Peffley	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 December 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-59,61,62 and 64-73* is/are pending in the application.

4a) Of the above claim(s) *1-48,64 and 65* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *49-59, 61, 62 and 66-73* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/6/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 6, 2004 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Claims 1-48, 64 and 65 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Claim Rejections - 35 USC § 102

Claims 49-54, 56-59, 66 and 68-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Ishikawa et al (6,366,206).

The Ishikawa et al reference discloses a medical label system which includes a label (15) including an integrated circuit which identifies a medical product by transmitting a radio frequency identifier. The system includes a computer system (17) which receives the information and tracks the location of the medical product. The label may be used to identify and track any number of medical products ranging from medications to surgical devices such as gloves, instruments and sponges (see Figures).

The label is made from a variety of materials which would give it properties such as temperature resistance and water resistance (col. 3, lines 15-45). The integrated circuit is shown in Figure 6 and includes an analog front end (i.e. coil and RF amplifier) with a controller (83) and a memory (79) coupled to the front end. Column 10, lines 20-47 of the Ishikawa et al patent discloses a system which includes a CPU and a memory for storing the location of a medical item (i.e. in the operating room).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 49-59, 61, 62 and 66 and 68-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al ('206) in view of the teaching of Flach et al (6,589,170)

The Ishikawa et al system has been addressed. While the examiner maintains that the Ishikawa et al system is capable of tracking a medical product and of storing a location of a medical product, the system clearly does not operate in the same manner as applicant's disclosed device for tracking and storing a location of a medical product. Flach et al disclose a medical tracking system which employs a number of ID tags (102A) and includes a computer system (116) that is used to monitor the exact location of each of the ID tags as they move throughout the tracking area (i.e. hospital).

With regard to the various materials for the label, the examiner maintains that the materials used to create the label would obviously, if not inherently, provide temperature, shock and water resistant properties. Also, Ishikawa et al disclose several products which are labeled including prescription medication and medical devices, but fail to specifically disclose the use of the label to identify blood products. It is the examiner position that one of ordinary skill in the art would recognize that such a label may be used to identify and track any product, including blood products, and would also obviously recognize the various data which may be saved by such a label.

To have provided the Ishikawa et al system with a computer control system to monitor and store the location of one or more of the RFID tags in a prescribed tracking area to allow a user to promptly identify the location of a medical product in a hospital setting would have been an obvious consideration for one of ordinary skill in the art in view of the teaching of Flach et al. To have further provided the label on any medical or non-medical product, including blood products, to identify and track the product would have been an obvious consideration for one of ordinary skill in the art.

Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al ('206) and Flach et al ('170) in view of the teaching of Imaichi et al ('747).

While Ishikawa et al disclose an integrated circuit having an analog front end located on a label, there is no specific teaching or disclosure that the label includes an LC circuit.

The examiner maintains that the use of LC circuits in integrated circuit designs is very well known. Further, Imaichi et al specifically teach that it is known to provide RFID labels with an LC circuit on the tag (see Abstract).

To have provided the Ishikawa et al label system, as modified by the teaching of Flach et al, with an LC circuit on the label for communicating data would have been an obvious consideration for one of ordinary skill in the art, particularly since Imaichi et al teach that it is known to use LC circuits on RFID tags.

Response to Arguments

Applicant's arguments filed December 6, 2004 have been considered but are not persuasive.

Applicant asserts that the Ishikawa et al reference fails to disclose a computer system including a set of instructions capable of being executed by a processor to receive the RFID to receive the RFID and to "track and store a location of the medical product" based on the RFID. The examiner again disagrees. The examiner acknowledges that the Ishikawa et al system, in particular the computer system, does not include the same instructions as described in applicant's disclosed invention. However, the examiner maintains that the Ishikawa et al system does track a medical product, and also stores a location of a medical product as broadly recited in the claims.

Applicant asserts on page 12 of the response that "scanning" is not the same as "tracking". It is the examiner's position that the applicant is using an unduly limited definition of the term "tracking" as it applies to his own disclosure. The examiner maintains that the Ishikawa et al description of generating an inventory and scanning

the surgical field is tracking a location of the medical product. That is, if a scan is performed prior to surgery and the location of the medical product is determined to be in the operating room, and a subsequent scan determines that the medical product has left the operating room, then the location of the medical product has been "tracked". Again, the examiner agrees that this is a broad interpretation of the term "tracked", but maintains that it is consistent with the claim language. With regard to the storage of a location of the medical product, column 10, lines 20-47 of Ishikawa et al set forth a system including a CPU and a memory whereby the memory is used to identify the location of a medical product (i.e. in the operating room). The examiner continues to assert that this disclosure may be broadly interpreted to represent a computer system configured to track and store a location of a medical product.

Additionally, the examiner has also used the Flach et al reference in an obviousness rejection. Flach et al disclose a medical ID tag system which includes a computer system used to track the ID tags within a hospital setting. The computer system can locate each of the ID tags on a real-time basis, and also stores information on the location of the ID tags. The location and tracking system of the Flach et al patent is much more similar to the tracking system of the instant patent application, and the examiner maintains that to have used such a computer system as taught by Flach et al to track the location of the Ishikawa et al RFID tags would be an obvious consideration for one of ordinary skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Peffley
Primary Examiner
Art Unit 3739

January 21, 2005